



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/811,204
Filing Date: March 26, 2004
Applicant: Daryl Chapman et al.
Group Art Unit: 1745
Examiner: Ben Lewis
Title: NON-FLAMMABLE EXHAUST ENABLER FOR
HYDROGEN POWERED FUEL CELLS
Attorney Docket: GP-302076

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO ELECTION / RESTRICTION REQUIREMENT

Sir:

The Examiner has required restriction to one of the inventions in group I, claims 1-25, drawn to a fuel cell system, classified in class 429, subclass 39 and group II, claims 26-30, drawn to a method of bleeding anode exhaust gas from a fuel cell system classified in class 429, subclass 13. The Examiner has also required election of one of the four species shown in figures 1-4. Applicant hereby elects group I, claims 1-25, and the species of figure 1 with traverse. Claims 1-5, 8-10, 14-17 and 22 read on the species of figure 1. Reconsideration of the election / restriction requirement is hereby respectfully requested.

The inventions of groups I and II are related as process and apparatus for its practice. The Examiner states that restriction is proper because the method of

bleeding the anode exhaust gas from a fuel cell system of independent claim 26 can be used by the distinct fuel cell systems as recited in claims 1-13, 14-21 and 22-25.

Applicant respectfully submits that the restriction requirement is improper because there is not a serious burden on the Examiner to examine both the inventions of the groups I and II if restriction was not required. MPEP 808.02 states that in order for there to be a serious burden, the Examiner must show a separate classification of the inventions, a separate status in the art when the inventions are classified together and a different field of search for the inventions. The Examiner has identified that the invention of group I is classified in class 429, subclass 39, and the invention of group II is classified in class 429, subclass 13. Applicant submits that this does not meet the requirement of showing a separate classification because a separate classification also requires a separate field of search. Applicant submits that a proper field of search will always include more than one subclass for an invention. Applicant submits that a proper field of search for the invention of group I directed to a fuel cell system including a fuel cell stack having a purge valve for selectively purging the anode exhaust gas from the stack and an accumulator for accumulating the purged anode exhaust gas would necessarily and significantly overlap the invention of group II directed to a method for bleeding the anode exhaust gas from a fuel cell stack by selectively purging the anode exhaust gas through a purge valve and accumulating the purged anode exhaust gas in an accumulator. Therefore, the Examiner has not established a burden because the Examiner has not established a separate classification or a different field of search for the inventions of groups I and II. No evidence is given that the inventions of groups I and II have a separate status in the art.

Based on the Examiner's requirement for restriction, it must be the Examiner's position that the fuel cell system of the invention of group I including a purge valve for selectively purging the anode exhaust gas from a fuel cell stack and an accumulator that accumulates the purged anode exhaust gas is patentably distinct from the method of the invention of group II for selectively purging the anode exhaust gas from a fuel cell stack through a purge valve and accumulatively purged anode exhaust gas from the purge valve in the accumulator because, "[w]here restriction is required by the office double patenting can not be held, and thus, it is imperative the requirement should never be made where related inventions as claimed are not distinct." MPEP 806.

In view of the previous discussion, it is respectfully requested that the Restriction and Election Requirement be withdrawn.

Applicant is filing concurrently herewith, a Power of Attorney to Prosecute Applications before the USPTO (appointing practitioners associated with the Customer No. 65798 Power of Attorney and changing the Correspondence Address as associated with Customer No. 65798 as identified below) along with a Statement under 37 CFR 3.73(b).

Respectfully submitted,

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